DISCOVER
BANK

December , 2005

Via E-Mail

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
Washington, D.C. 20551

Re: Docket No. R-1217
TILA Amendments of 2005 Bankruptcy Reform Law

Discover Bank appreciates the opportunity to comment on the Board's advanced notice of proposed rulemaking addressing the Truth in Lending Act disclosure requirements of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. As the issuer of the Discover Card, we will be subject to the new disclosure requirements applicable to open end credit card accounts, and will focus in this letter on the requirements affecting minimum payments, introductory rates, and late payment fees.

We are pleased that the Board has decided to use an integrated approach to developing disclosures that meet both the requirements of the bankruptcy reform law and also the Board's broader goal of improving the effectiveness and usefulness of the TILA disclosures of Regulation Z. We agree that this is preferable to a two-phase approach that could require lenders to implement new disclosures to comply with the mandates of the bankruptcy reform measure only to change them following the completion of the Regulation Z review.

Minimum Payment Disclosure

The detailed list of questions in the ANPR about the minimum payment disclosure requirements illustrates that both the objective and the substantive requirements of the statutory requirements are far from clear. Unfortunately, there is little to be learned about the minimum payment disclosure requirement from its legislative history. The Senate Banking Committee and the House Financial Services Committee, which have jurisdiction over the Truth in Lending Act, did not originate or deliberate on the minimum payment requirement. It was, instead, added to an early version of the bill through the amendment process, and there was little discussion about it in the numerous committee hearings, Congressional committee reports and House and Senate debates that led to its enactment as part of the bankruptcy reform law after a multi-Congress legislative process.

It may be that the authors of the disclosure requirement did not fully appreciate the numerous variables that affect the calculation and the difficulty, if not the impossibility, of accurately disclosing the "actual" number of months it would take a borrower to amortize an account balance by making only minimum payments. However, the statute mandates a relatively brief "warning" statement that includes a single example, and toll-free access to additional examples about the consequences of making minimum payments. This suggests that Congress was less interested in furnishing consumers with precise calculations than in imparting a general message: making only minimum payments can be costly. The regulation implementing the law should therefore focus on the development of disclosures that are readily understandable by individuals who are likely to make only minimum payments persistently, and on strategies that best ensure that they will read the disclosure. The overall message that Congress intended to impart would be obscured by requirements to disclose numerous conditions, exceptions, assumptions, or formula variations.

Q60: Should the Board consider an exemption that would permit creditors to omit the minimum payment disclosures from periodic statements for certain accountholders … for example, an exemption for consumers who typically (1) do not revolve balances; or (2) make minimum payments that regularly exceed the minimum?

Discover Bank strongly supports the Board's use of its exemptive authority to permit creditors to target the minimum payment disclosures to those who might potentially benefit from them, by exempting customers who are unlikely to find them helpful. The minimum payment "warning" would be most effective if read by the small number individuals who habitually make only the minimum payment, rather by the larger group that makes higher, even full, payments each month.[1] Targeting minimum payment disclosures based on an individual borrower's own payment behavior (e.g., following three consecutive minimum payments) would also have the benefit of presenting these individuals with a timely "new" message that is more likely to elicit a response than a message that appears month after month.

We are not aware of industry-wide information about the percentage of credit card users who repeatedly make only minimum payments, but we believe that this is a relatively small (single-digit) number. Moreover, while the recent regulatory guidance on amortization of credit card balances may increase the percentage of minimum-only payers near-term as some consumers adjust to higher minimums, we believe that this will not be a long-term trend. Despite the unspoken premise of the statutory requirement

[1] While individuals who make payments larger than the minimum, but less than the full balance, might derive some arguable benefit from the disclosure, there is no evidence that the statutory requirement (entitled "Minimum Payment Disclosure") was intended to target individuals who are not minimum payers.

(that consumers may simply not understand that it is more costly to make only the minimum payments month after month), we think all consumers know it is preferable to pay down higher-APR debt sooner rather than later. Consumers' embrace of the ability to transfer balances to lower-APR credit cards illustrates this.

A minimum payment disclosure is of no value to a borrower who never, or only occasionally, "revolves" the account balance: this individual simply has no opportunity to improve his or her payment behavior by making larger payments. Similarly, providing the disclosure to an individual whose entire balance is subject to a low-APR temporary promotional rate may be of little value. Making only the minimum payment during the introductory rate period might make economic sense for individuals who intend to pay off the account balance when the introductory rate expires.

Exemptions may also be appropriate for consumers who, in an effort to prevent defaulting on their payment obligations, have entered into special payment agreements with their lenders. Under such arrangements, lenders may agree to forego collection of fees and penalties (or part of the principal), reduce the APR on the account balance, or make other concessions, while the borrower agrees to make payments, sometimes at the minimum payment level. For customers in such programs, the option of making payments larger than the minimum is rarely a practical one, while continuing to make the agreed-upon minimum payment has beneficial effects (avoidance of bankruptcy, reduction of indebtedness, improved credit history.) As a result, a monthly notice to these individuals about the negative consequences of making only minimum payments would send the wrong message. This would be counterproductive at best and inconsistent with the guidance regarding re-aged accounts, workouts and temporary hardship plans.

As discussed in our response to Q81, information currently available to the Board from lenders whose customers use Web-based minimum payment calculators might help the Board identify categories of borrowers who do not use or benefit from this information. For example, if this data reveals that non-revolvers rarely use these calculators or that minimum-payment only customers who have used the calculators rarely change their payment behavior, that information might further support a decision to exempt such borrowers from the new disclosure requirements. In the future, the experience of lenders and consumers under the new disclosure regime will provide a basis for the Board to further refine the exemptions. If this experience identifies other categories of borrowers who are receiving periodic statements disclosures but are not responding to them (by calling the toll-free number or by making larger payments), an exemption for these individuals would be in order, since their payment behavior would demonstrate that the disclosures are of no value to them.

Q62: The Bankruptcy Act authorizes the Board to adjust periodically the APR used in the hypothetical example and to recalculate the repayment period accordingly. … Should the Board adjust the 17 percent APR used in the statutory example? If so, what criteria should the Board use in making the adjustment?

A disclosure that uses assumptions that do not apply to most consumers is of little value. It makes sense to adjust both the APR and the “typical” minimum payment used in the hypothetical example to reflect those prevailing in the marketplace. Minimum payment requirements have generally increased since the statutory language of the bankruptcy reform law was devised for a bill first considered by Congress eight years ago. Thus, adjustments to the disclosure are warranted.

On the other hand, frequent adjustments in the disclosures would entail costly implementation and compliance burdens for lenders while providing little benefit for credit card users who would be better served by receiving a consistent message that is repeated over time. Thus, while the Board should monitor the marketplace and propose periodic changes when warranted, it should avoid frequent changes in the disclosure that might blur the overall message.

Similarly, even though the percentages used in the example may be higher or lower than the actual percentages applicable to an individual borrower, requiring changes in the disclosures to mirror individual lender’s practices would be inconsistent with the statutory goal of providing all consumers with the same “example.” Consumers who receive credit card statements monthly from multiple issuers would benefit by receiving consistent information.

Q64: The statutory examples refer to the stated minimum payment percentages of 2 percent or 5 percent, as being “typical.”... Should the hypothetical example refer to the minimum payment percentage as “typical,” and if not, how should the disclosure convey to consumers that the example does not represent their actual account terms?

Although the statute appears to mandate the use of the word “typical,” this term is susceptible to different interpretations, as the ANPR points out. However, we do not believe that referring to “typical” minimum payment percentages will confuse or mislead consumers. Specifically, this term is not likely to lead consumers to believe that the percentage is a reference to their own account.

It is unlikely that most consumers are aware of the formula that is used to calculate the minimum payment of the credit cards they use, information that is disclosed in the account agreement but rarely appears on the periodic statement. But the reference to the stated minimum percentage as an “example" signals to the consumer that the percentage is not based on the formula that pertains to his or her own account. An attempt to explain further the meaning of this term (adding, for example, a description of the manner in which the minimum payment amount is calculated) would only make an already lengthy disclosure longer and more complex. In any event, action intended to clarify consumers’ understanding of the meaning of a “typical” minimum payment amount should be deferred until focus group or other evidence demonstrates that the use of this term would be confusing.

Q68: Should creditors have the option of programming their systems to calculate the estimated repayment period using the creditor's actual payment formula in lieu of a "typical" minimum payment formula assumed by the Board? Should creditors be required to do so? What would be the additional cost of compliance for creditors if they must use their actual minimum payment formula? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

We do not think that Congress intended to require creditors to use their actual repayment formula in lieu of a "typical" one. The statute could readily have included such a mandate if Congress had so intended. While it is difficult to oppose allowing creditors to utilize their actual payment formula voluntarily, this option may not be beneficial to consumers because it would detract from the consistent disclosure that the statute seems to have intended consumers to receive regardless of the bank from which they obtained their credit card.

It is virtually inconceivable that differences in the calculations that result from a "typical" vs. an actual minimum payment formula would affect the decision-making of real consumers. For example, it is unlikely that a consumer's decision to make only minimum payments for the life of his account balance would differ if he were told that the repayment period would be 98 vs. 89 months. Such differences are likely to be inconsequential for actual consumers, and requiring or allowing them to be disclosed would provide little benefit. A uniform disclosure based on a typical formula that is provided to all consumers is just as likely to achieve the statutory goal of demonstrating that minimum-only payment behavior can be very costly.

Q69: Should the Board use a formula for calculating repayment periods that assumes a "typical" minimum payment that does not result in negative amortization? If so, should the Board permit or require creditors to use a different formula to estimate the repayment period if the creditor's actual minimum payment requirement allows negative amortization? What guidance should the Board provide on how creditors disclose the repayment period in instances where negative amortization occurs?

We believe that the repayment period calculation should incorporate an assumption that the minimum payment will not result in negative amortization. The calculation is based on the statutory assumptions that no further charges will be made on the account and that payments will be made when due. Implicit in these assumptions is the assumption that there will be no future additions to the balance triggered by purchase or payment activity (e.g., transaction fees, late fees, overlimit fees, balance transfer fees) that might otherwise require higher payments in order to amortize the balance. A hypothetical consumer who stopped using the account and made timely minimum payments would be able to amortize the balance. It is therefore reasonable for the Board to use a formula that assumes that the "typical" minimum payment does not result in negative amortization.

Q70: What proportion of credit card accounts accrue finance charges at more than one periodic rate? Are account balances typically distributed in a particular manner, for example, with the greater proportion of the balance accruing finance charges at the higher rate or the lower rate?

We are not aware of industry-wide data. A significant percentage of Discover accounts do not carry balances from month to month, and therefore do not incur finance charges. The bulk of Discover account balances on which finance charges accrue are assessed at the APR for purchases.

Q71: The statute's hypothetical examples assume that a single APR applies to a single balance. For accounts that have multiple APRs, would it be appropriate to calculate an estimated repayment period using a single APR? If so, which APR for the account should be used in calculating the estimate?

The examples should not attempt to make estimates based on multiple balances carrying different APRs. For one thing, accounts with multiple APRs often include an APR (introductory, balance transfer) that is of temporary duration. Examples that incorporate multiple balances would also have to make assumptions, and possible disclosures, about the size of each balance to which a different APR applies, the length of time that the APR applies to such balance (e.g., temporary promotional APR vs. permanent cash advance APR), and how payments are allocated to each.

The underlying purpose of the disclosure requirement – to remind borrowers that consistently making minimum payments can be costly – does not require these complicated calculations. An example based on a single balance, such as the purchase APR balance that forms the bulk of most credit card account balances, would convey this message effectively. This could be coupled with a brief disclaimer (e.g., "Results will differ if portions of your account balance are subject to higher or lower APRs.")

Q72: Instead of using a single APR, should the Board adopt a formula that uses multiple APRs but incorporates assumptions about how those APRs should be weighted? Should consumers receive an estimated repayment period using the assumption that the lowest APR applies to the entire balance and a second estimate based on application of the highest APR; this would provide consumers with a range for the estimated repayment period instead of a single answer. Are there other ways to account for multiple APRs in estimating the repayment period?

The Board should not adopt a formula based on multiple balances. Attempting to predict the repayment periods for multiple balances at different APRs would require a complex and confusing disclosure. As a practical matter, such a disclosure would provide consumers with no useful information, because the additional information is highly unlikely to change consumer payment practices. This would seem particularly true with respect to introductory or promotional balances that will expire in 6-12 months, changing the theoretical payoff time by a relatively insignificant amount over the life of the balance.

Congress was surely aware that credit card users are commonly offered different rates for different types of transactions (e.g., purchases, cash advances) or promotions (e.g., balance transfers, new account or other promotions). Indeed, the bankruptcy reform law itself contains a separate disclosure provision that addresses introductory rates. Consumers, too, are aware that APRs vary or may be in effect for limited periods. These differences are promoted in credit card and balance transfer offers, disclosed in card account agreements, and are disclosed again on each periodic statement. (The new introductory rate disclosure requirements insure that these disclosures are explicit and prominent). However, the statute does not require the minimum payment disclosure to mention multiple balance scenarios or the Board to formulate examples based on more than a single balance and a single APR. The statutory language requiring periodic statement disclosure refers to "a" balance, not multiple balances, and the directive regarding the Board's rate table speaks of the number of months it would take to repay "an" outstanding balance, as opposed to multiple balances.

If the Board determines that some reference to the multiple balance scenario is required, perhaps the best way to address the issue would be through a general disclaimer, e.g., "The repayment time will differ if a portion of your account balance is subject to a different APR."

Q73: What would be the additional compliance cost for creditors if, in connection with implementing the minimum payment disclosures, creditors were required to disclose on periodic statements the portion of the ending balance subject to each APR for the account?

Discover Card currently provides its Cardmembers with a periodic statement disclosure of the dollar amount of the balance that is subject to each APR and whether the rate is fixed or variable, so providing this information would not result in additional compliance costs. However, for the reasons stated above, we do not believe that the minimum payment examples should be required to calculate payoff estimates that are based on more than a single APR.

Q74: As an alternative to disclosing more complete APR information on periodic statements, creditors could program their systems to calculate a consumer's repayment period based on the APRs applicable to the consumer's account balance. Should this be an option or should creditors be required to do so? What would be the additional cost of compliance for creditors if this was required? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

We do not believe that there is a statutory basis for *requiring* the use of the APR applicable to each consumer's account in making repayment estimates. Absent information demonstrating that this "customized" form of disclosure would motivate a significant percentage of consumers to change their payment behavior and begin making larger payments, there is really no discernable "benefit" to be weighed against the cost of making such disclosure -- regardless of the amount of that cost.

By requiring the disclosure to provide examples and make estimates, Congress recognized that consumers have the ability to apply the examples to their own individual situations. It does not require sophisticated mathematical skills for a consumer to appreciate that the payment period will be longer than the one given in an example if his or her APR is higher than the one used in the example. A consumer with a balance subject to a 19% APR who reads a statutory example that uses a 17% APR will surely understand that the payment period for his or her balance will be longer than the one shown in the example. It is doubtful that providing that consumer with the additional number of payments required to amortize the balance would be any more likely than the original example to change the consumer's payment behavior.

Q75: If multiple APRs are used, assumptions must be made about how consumers' payments are allocated to different balances. Should it be assumed for purposes of the toll-free telephone number that payments always are allocated first to the balance carrying the lowest APR?

Again, we do not believe that a multiple balance calculation is required or useful for purposes of providing "examples" via the toll-free number. Should such a requirement be included, however, the assumption that payments are allocated first to the lowest-APR balance would be a reasonable one that reflects industry practice.

Q76: What key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period? When and how should these key assumptions be disclosed? Should some or all of these assumptions be disclosed on the periodic statement or should they be provided orally when the consumer uses the toll-free telephone number? Should the Board issue model clauses for these disclosures?

A recitation of each of the assumptions underlying the minimum payment calculation could be lengthy and confusing. On the other hand, a disclosure that does not refer to the assumptions might be misleading. The disclosure should balance these conflicting concerns by including a brief statement informing the consumer that because the calculation is based on assumptions applicable generally to typical credit card accounts that may not pertain to the consumer's own account, the payment time for their loan may differ from those shown in the examples.

Q77: What standards should be used in determining whether a creditor has accurately provided the "actual number of months" to repay the outstanding balance? Should the Board consider any safe harbors? For example, should the Board deem that a creditor has provided an "actual" repayment period if the creditor's calculation is based on certain account terms identified by the Board (such as the actual balance calculation method, payment allocation method, all applicable APRs, and the creditor's actual minimum payment formula)? With respect to other terms that affect the repayment calculation, should creditors be permitted to use the assumptions specified by the Board, even if those assumptions do not match the terms on the consumer's account?

We support a safe harbor for creditors who use their own minimum payment formula in conjunction with account terms as defined by the Board, even if those terms do not mirror all of the terms of the customer's own account. This would have the benefit of providing relatively consistent disclosures to consumers who have accounts with multiple lenders. Allowing consumers' current ("actual") balance to be incorporated into this calculation would yield a payment disclosure that would be close to the repayment time for that customer in the unlikely circumstance that he or she discontinued using the card and made minimum payments only until the balance was amortized. Though the Board-adopted assumptions might yield a result different than would be calculated using the terms of the customer's account, the result would be consistent with the overall objective of the statute.

Q78: Should the Board adopt a tolerance for error in disclosing the actual repayment periods? If so, what should the tolerance be?

The Board should adopt a tolerance for error. As stated above, we believe that the overall purpose of the new disclosure is to motivate consumers to make payments larger than the minimum, by giving them examples of how costly it can be to persistently make minimum-only payments. This message is conveyed by a disclosure that provides a legitimate good-faith estimate. It does not require mathematical precision which, even if achievable, would be unlikely to produce different results (i.e., motivate consumers to make larger payments than they would make if the disclosed payment period were several months longer or shorter).

Because making a precise calculation is both difficult for lenders and of questionable utility for consumers, a tolerance is appropriate. A tolerance for errors (perhaps based on a percentage of the total monthly payment period) would ease the compliance burden for lenders without depriving consumers of information that would be of practical significance to them.

Q81: Are any creditors currently offering web-based calculation tools that permit consumers to obtain estimates of repayment periods? If so, how are these

calculation tools typically structured; what information is typically requested from consumers, and what assumptions are made in estimating the repayment period?

Discover Card does not currently provide a Web-based minimum payment calculation tool. In reviewing some of the calculation tools currently available online, we have observed that they typically request information about the balance amount, APR and minimum payment percentage (e.g., 2% of balance). None of these tools provides a mechanism for estimating payment times for accounts that carry multiple APRs, nor explains how the payment time estimate is calculated. We have also noted that payment estimates sometimes differ from site to site (and from the statutory examples), even when the identical balance, APR and minimum payment percentages are used. The differences are presumably the result of different assumptions being used in the calculation (As opposed to mathematical errors), but the assumptions on which the calculations are based are not disclosed.

We would urge the board to explore whether these tools have the practical effect of motivating consumers to change their minimum payment practices. Creditors who make these tools available to their own customers may have information about the payment behavior of the customers who use them (e.g., whether they are used principally by the consumers who repeatedly make minimum-only payments and might benefit from learning more about the long-term costs of this behavior). Most significantly, information about customer's use of online calculators would reveal whether minimum payers who use these tools subsequently increase their monthly payments.

Q82: Are there alternative ways the Board should consider for creditors to provide repayment periods other than through toll-free telephone numbers? For example, the Board could encourage creditors to disclose the repayment estimate or actual number of months to repay on the periodic statement; these creditors could be exempted from the requirement to maintain a toll-free telephone number. This would simplify the process for consumers and possibly for creditors as well. What difficulties would creditors have in disclosing the repayment estimate or actual repayment period on the periodic statement?

The option of making the estimated payment period disclosure on the periodic statement, in lieu of through a toll-free number, could be very costly to implement and administer, particularly if it must be sent to all accountholders. It is therefore unlikely to be utilized by creditors - *unless* the Board uses its exemption authority (in the manner described in our response to Q62) to limit the universe of consumers to whom the disclosure must be mailed. If the Board allows the disclosure to be targeted to the relatively small number of consumers who stand to benefit from it (i.e., persistent minimum payers), the expense of providing a periodic statement disclosure could well be less than the cost of maintaining a toll free line with the capacity to calculate minimum payment time estimates upon request.

Q83: What guidance should the Board provide on the location or format of the minimum payment disclosures? Is a minimum type size requirement appropriate?

The statutory language, requiring a “clear and conspicuous” disclosure on the front of the periodic statement in a “prominent location”, provides adequate guidance. Lenders’ periodic statements differ in style and format, and detailed prescriptive placement requirements or format directives might conflict with the overall format each lender has designed, and its customers recognize. For the same reason, there is no need to require a minimum type size for the disclosure. The “clear and conspicuous” requirement is adequate to prevent a lender from evading the intention of the disclosure requirement by burying the disclosure or printing it in miniscule typeface.

Q84: What model forms or clauses should the Board consider?

As discussed in our responses to Q61 and Q62, should the Board adopt assumptions underlying the calculation of the estimated or “actual” payment periods, it would be helpful for the Board to devise model clauses to alert borrowers that the results may differ for their own accounts.

Introductory Rate Disclosures

Q85: What guidance should the Board provide on satisfying the clear and conspicuous requirement? Should the Board impose format requirements, such as a minimum font size? Are there other requirements the Board should consider? What model disclosures should the Board issue?

We do not think there is a need for regulatory guidance of the clear and conspicuous requirement that goes beyond the statutory language. The law’s principal consumer protection is the requirement to disclose, each time an APR is mentioned, that the rate is an “introductory” one in “immediate proximity” to the mention of the APR. This mandate assures that every consumer, regardless of his or her level of sophistication, will be reminded in readily understandable language - perhaps multiple times – that the promotional APR will expire. This disclosure should prompt all consumers to read the details about what happens when the introductory rate expires, and the circumstances under which it can be terminated.

Because the requirement is clear, it is difficult to envision a successful attempt by a regulated lender to conceal or minimize this disclosure or obscure it with a diminutive type size or format distractions. We do not believe that detailed requirements are needed to prevent such evasions or to clarify what seem to be straightforward requirements. Of course, should evidence of the need for such guidance emerge after the disclosure requirement takes effect, the Board could implement guidance that is targeted to deficiencies in existing disclosures.

Q86: Credit card issuers must use the term "introductory" in immediate proximity to <u>each</u> mention of the introductory APR. What guidance, if any, should the Board provide in interpreting the "immediate proximity" requirement? Is it sufficient for the term "introductory" to immediately precede or follow the APR (such as "Introductory APR 3.9%" or "3.9% APR introductory rate")?

It is unclear that Congress intended "immediate proximity" to mean "adjacent to," as the examples in Q86 suggest. The statute does not use the word "adjacent," but instead uses the word "proximate." Derived from the Latin word for "to approach", "proximate" means "very near: close" (Webster's New Collegiate Dictionary) – language that is not the same as "next to." In the context of the APR disclosure, "immediately proximate" does not clearly connote that no other words may separate "introductory" and "APR." For example, an offer that referred to an "Introductory promotional [or special] rate of 3.9% APR" should be deemed to satisfy the statutory requirement even though the words "introductory" and "APR" are not adjacent to one another.

The Board should also consider allowing credit card offers to use terms other than "introductory" if they clearly connote that the APR will be in effect for a limited duration. For example, an offer that refers to a "temporary 3.9% APR" is just as effective as one using the word "introductory" (and perhaps more so) in signaling that the APR will expire.

Q87: What standards should the Board use to identify one APR in particular as the "first mention" (such as the APR using the largest font size, or the one located highest on the page)?

See response to Q88.

Q88: Direct-mail offers often include several documents sent in a single envelope. Should the Board seek to identify one document as the "first mention" of the temporary APR? Or should each document be considered a separate solicitation, so that all documents mentioning the introductory APR contain the required disclosures?

Treating *every* document that mentions the temporary APR as if it were the "*first*" document to mention the APR is clearly inconsistent with the statutory requirement. The statutory use of the word "first" evinces an unambiguous intention to require a single disclosure.

In providing guidance as to which document in a solicitation package is deemed the "first", the Board should not focus on the precise order in which the documents appear.

For example, some solicitations contain small inserts designed to encourage the recipient to read and consider the offer but do not describe the details of the offer or provide sufficient information for the consumer to accept the offer. Such inserts should not be deemed the first mention of the APR. Instead, the Board might consider a content-based standard like the one developed by the FTC, in consultation with the Board, for the prescreened offer opt out notice (16 C.F.R. Part 682), a disclosure that is also furnished as part of credit card offers. That notice must appear in the "principal promotional document" which the prescreen rule defines as "the document designed to be seen first by the consumer, such as the cover letter." (16 C.F.R. Section 642.2(b)).

Q89: The expiration date for the temporary APR and the go-to APR also must be in a "prominent location" that is "closely proximate" to the temporary APR. What guidance, if any, should the Board provide on this requirement?

The statutory language seems clear enough as to require no further guidance.

Q90: What guidance should the Board provide on how to disclose the "go-to" APR in the solicitation when the permanent APR is set using risk-based pricing? Should all the possible rates be listed, or should a range of rates be permissible, indicating the rate will be determined based on creditworthiness?

Where the go-to APR may vary within a range (e.g., "from 9.9% to 18%"), creditors should be permitted to disclose the range, without having to separately list each APR within the range. A separate listing would create a cluttered disclosure and is not helpful to consumers.

Q91: The Bankruptcy Act requires that a general description of the circumstances that may result in revocation of the temporary rate must be disclosed "in a prominent manner" on the application or solicitation. What additional rules should be considered by the Board to ensure that creditors' disclosures comply with the Bankruptcy Act amendments? Is additional guidance needed on what constitutes a "general description" of the circumstances that may result in revocation of the temporary APR? If so, what should that guidance say?

Consistent with existing Truth in Lending Act disclosures, the rule should allow a disclosure of special circumstances that may result in a revocation of the introductory APR to appear in a footnote, so long as an asterisk or other means is used to alert consumers to this information. Requiring a description of these circumstances to appear adjacent to or in proximity to the APR would result in a confusing disclosure, and one that will be of little interest to most consumers, whose account usage will never trigger an APR increase.

Q94: What guidance should the Board provide on how solicitation (and application) disclosures may be made clearly and conspicuously using the Internet? What model disclosures, if any, should the Board provide?

The Federal Trade Commission's guidance for online advertisers ("Dot Com Disclosures") contains much useful information regarding promotional materials that are disseminated via the Internet, such as how to evaluate the proximity of a disclosure in the context of a Web page, the use of hyperlinks, and standards for determining the prominence of claims and disclosures.

The Board's 2001 interim final rules are consistent with this approach. We urge the Board to continue to provide general guidelines of this type, coupled with examples, rather than the adopting of formal disclosure rules or model forms. Internet applications and solicitations are still relatively new forms of communication for financial institutions. Lenders need the flexibility to develop appropriate ways of complying with the new Truth in Lending requirements when they use these means of communication.

Q95: What guidance should the Board provide regarding when disclosures are "readily accessible to consumers in close proximity" to a solicitation that is made on the Internet? Is additional or different guidance needed from the guidance in the 2001 interim final rules?

See response to Q94. The FTC's "Dot Com Disclosure" addresses the use of scrolling and text cues in the context of proximity requirements.

Q96: What guidance should the Board provide regarding what it means for the disclosures to be "updated regularly to reflect the current policies, terms, and fee amounts?" Is the guidance in the 2001 interim rules, suggesting a 30-day standard, appropriate?

The Board's interim 30-day standard continues to be appropriate.

Payment Deadlines and Late Payment Penalties

Q97: Under what circumstances, if any, would the "date on which the payment is due" be different from the "earliest date on which a late payment fee may be

charged?"

The payment date typically marks the date on which finance charge calculations are based. The late payment fee may be assessed on the same date, but may be delayed until a subsequent date (such as the following day).

Q98: Is additional guidance needed on how these disclosures may be made in a clear and conspicuous manner on periodic statements? Should the Board consider particular format requirements, such as requiring the late payment fee to be disclosed in close proximity to the payment due date (or the earliest date on which a late payment fee may be charged, if different)? What model disclosures, if any, should the Board provide with respect to these disclosures?

The amount of the late payment fee is not pertinent to most customers: it affects only the minority of customers whose payments are not received on time. The increased use of online payments reduces the chances that payments will arrive late due to postal delays, while customers who pre-authorize automatic payments of at least the minimum payment are assured that a late payment fee will never be assessed. A requirement to disclose the amount of this fee in proximity to the payment date would not provide most customers with information that is useful.

The dollar amount of the Discover Card late payment fees depends on the size of the outstanding balance. (Currently, one of three different late fees may be assessed based on the account balance). Disclosure of each fee and the balance to which it applies under "tiered rate" fees requires additional space. This would further clutter the periodic statement if a front-of-statement requirement were imposed.

Q99: If the Board continues to allow creditors to establish reasonable cut-off hours, should the cut-off hour be disclosed on each periodic statement in close proximity to the payment due date?

Discover Card currently discloses the cut-off hour for receipt of payments on the back of the periodic statement. Since most payments arrive before the due date, cut-off hour information is not pertinent to most accountholders, and requiring it to appear in close proximity to the due date would not be useful information. After all, consumers cannot control the precise time of day their payment will arrive. Before requiring a more prominent disclosure of the cut-off hour, the Board should evaluate whether this would motivate changes in behavior (i.e., earlier payments). This could be done by working with lenders to evaluate whether the late payment behavior of customers who receive such information differs from that of customers who do not.

Q100: Failure to make a payment on or before the required due date commonly

triggers an increased APR in addition to a late payment fee. As a part of the Regulation Z review, should the Board consider requiring that any increased rate that would apply to outstanding balances accompany the late payment fee disclosure?

The late fee and the APR have always been treated as separate issues (e.g., disclosed separately in the "Schumer box.") Since there are a number of circumstances that can result in an increase in the APR, but just one that triggers a late payment fee (i.e., payment received late), it may be preferable to continue to require separate disclosures.

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Discover Bank appreciates the opportunity to comment on the proposed new disclosure requirements. If further information would be useful, please contact me.

Respectfully submitted,

Discover Bank

By: Cathy Roberts

President

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